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ABSTRACT

This pamphlet provides general information and guidelines concerning the application of the federal Fair Labor Standards Act to employees of elementary and secondary schools, as of January 1974. Separate short sections of the pamphlet examine various provisions of the act, emphasizing their impact on employer-employee relations in the schools. Specific topics discussed include coverage of the act, basic monetary requirements, equal pay provisions, overtime regulations, provisions on hours worked, exemptions from the act, child labor provisions, and enforcement of the act. (JG)

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ELEMENTARY AND SECONDARY SCHOOLS

UNDER THE FAIR LABOR STANDARDS ACT

JANUARY 1974

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

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ELEMENTARY AND SECONDARY SCHOOLS UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act contains minimum wage, equal pay, maximum hours, overtime pay, recordkeeping requirements, and child labor standards. This pamphlet provides general information concerning the application of this Act to employees of elementary and secondary schools.

The Act is administered by the U. S. Department of Labor's Wage and Hour Division. If you have specific questions about the statutory requirements, consult the nearest office of the Division. The Division's publications referred to herein may be obtained from any office of the Division.

GENERAL STATEMENT

Prior to February 1, 1967, employees of public elementary and secondary schools were outside the scope of the Fair Labor Standards Act as the Act did not apply to employees of any State or political subdivision of a State. Public school employees were brought under the Act on February 1, 1967, by the 1966 amendments. In June 1968 the Supreme Court in Maryland v. Wirtz, 392 U. S. 183, found this provision constitutional.

COVERAGE

The 1966 amendments to the Act extended enterprise coverage to all activities performed in connection with the operation of an elementary or secondary school (whether public or private or whether operated for profit or not for profit) regardless of the annual dollar volume of the institution, provided there are in the enterprise employees engaged in commerce or in the production of goods for commerce, including employees who handle, sell or otherwise work on goods which have been moved in or produced for such commerce.

In the case of an independent school district, generally all employees of the district are employed in activities in connection with the operation of public schools and subject to the monetary standards of the Act unless exempt as teachers, academic administrative personnel, or other executive, administrative, or professional employees defined in Regulations, Part 541. Some school districts,

however, are not engaged in the operation of schools, but only send pupils to other districts which do operate schools. Since the Act's coverage is limited to those "engaged in the operation of" schools, generally an employee of a district which operates no schools would not be covered.

Employees of public schools employed at central locations where the operations of schools are administered or serviced and whose work involves duties in connection with the operation of the schools are within the coverage of the Act. For example, coverage extends to clerical workers performing duties in connection with the purchasing or distribution of supplies or equipment for the schools, and to mechanics servicing vehicles or other equipment used in the school operations.

Volunteer services: Individuals who volunteer their services, usually on a part-time basis, to a school not as employees or in contemplation of pay are not considered employees within the meaning of the Act. For example, mothers may assist in a school cafeteria or library as a public duty to maintain effective services for their children, or fathers may drive a school bus to take a football team or band on a trip without creating an employer-employee relationship. On the other hand, a bookkeeper could not be treated as an unpaid volunteer bookkeeper for the employing institution in the same workweek in which he is also an employee.

Student employment: Students who may occasionally clean up a classroom, serve the school as junior patrol officers, or perform clerical work in the school office for periods of an hour per day or less without contemplation of pay are not considered employees. The Division will not assert that students who help in school lunchrooms or cafeterias for short periods of time, such as a half hour or an hour a day in exchange for their lunches, are employees. This enforcement policy also applies where the student receives for such casual service a cash amount reasonably equivalent to the price of the meal or a nominal sum in addition to the meal. However, in situations where the understanding is that the student will work for wages there will be an employment relationship, and the cash wage together with the reasonable cost of the meal furnished to the student must equal at least the minimum wage for the time worked.

Extracurricular activities: As part of the educational program, schools may permit or require students to participate in activities in connection with dramatics, school publications, bands, athletics and similar endeavors. Participation by the student in such programs, conducted primarily for the benefit of the participants as part of the educational opportunities provided to the students by the school, does not create an employment relationship between the school and the student.

BASIC MONETARY REQUIREMENTS

Minimum wages: Employees of elementary and secondary schools must be paid a minimum wage of not less than $1.60 per hour. For employees in Puerto Rico and American Samoa, industry wage orders may set minimum wage rates below the generally applicable minimum.

Facilities Furnished to School Employees: Where meals, lodging, or other facilities are customarily provided for the benefit of the employees, the reasonable cost or fair value is considered as wages paid, under section 3(m) of the Act. This section also provides that such costs shall not be included as part of wages to the extent that they are excluded therefrom by the terms of a bona fide collective bargaining agreement. The reasonable cost is defined in the Regulations, Part 531, as the actual cost to the employer without a profit.

The cost of facilities furnished by the employer primarily for the employer's benefit instead of the employee's, may not be included in computing wages. For example, the cost of furnishing and laundering uniforms, where required by the employer or by the nature of the job, must not be added to or deducted from wages when determining the employee's regular rate. Nor may the cost be charged to the employee where such charge would reduce the wages paid in any workweek below the required minimum wage.

EQUAL PAY PROVISIONS

Under the equal pay provisions, the employer may not discriminate on the basis of sex by paying employees of one sex at rates lower than he pays employees of the opposite sex, in the same establishment, for doing equal work on jobs requiring equal skill, effort and responsibility which are performed under similar working conditions. All employees working within an establishment in which employees are subject to any provision of section 6 of the Act (section 6 contains the minimum wage and equal pay provisions of the Act) are entitled to the benefits of the equal pay provisions. Included are employees employed in bona fide executive, administrative, or professional capacities, or in the capacity of outside salesman, as defined in 29 CFR 541 even though otherwise exempt from the Act's minimum wage and overtime pay provisions.

Exceptions are provided under the Act where it can be shown that the wage differential is based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or on any other factor other than sex.

An employer who is paying a wage differential in violation of the equal pay provisions of the Act may not reduce the wage rate of any employee in order to comply with these provisions. Wages withheld

in violation of the equal pay provisions have the status of unpaid minimum wages or unpaid overtime compensation under the Act, and back wages due under the equal pay provisions are subject to the same methods of recovery as any other wages due under the Act.

The law prohibits any labor organization, or its agents, representing employees of an employer having employees subject to any provision of section 6 of the Act, from causing or attempting to cause the employer to discriminate against an employee in violation of the equal pay provisions.

SPECIAL CERTIFICATES

Unless specifically exempt, all covered employees must be paid at least the applicable minimum wage, regardless of whether the employees are paid on a time, piece, job, incentive, or any other basis. However, learners, student-learners, apprentices, messengers, and handicapped workers may be paid special lower minimum wage rates provided that special certificates are first obtained from the W-H Division's Administrator.

OVERTIME

The Fair Labor Standards Act requires the payment of at least one and one-half times the regular rate of pay to covered, nonexempt employees after 40 hours of work in a workweek. It does not require that an employee be paid each week. The employer may make his wage or salary payment at other regular intervals, such as every two weeks, every half month, or once a month. What the Act does require is that both minimum wage and overtime pay must be computed on the basis of hours worked each workweek standing alone. The employer cannot average the hours of work over two or more workweeks.

Overtime pay must normally be paid on the pay day for the pay period in which it is worked. Overtime hours may not be accumulated and taken off at any time subsequent to the period in which it is worked.

Before overtime pay can be computed it is necessary to determine the employee's regular rate, since the Act requires payment for overtime hours at not less than one and one-half times the regular rate of pay. The regular rate of pay may not be less than the statutory minimum, and includes all remuneration for employment except certain payments excluded by the law itself. Payments which are not part of the regular rate include reimbursement for expenses incurred on the employer's behalf; certain bonuses and gifts; payments pursuant to certain welfare plans and payment for occasional periods when no work is performed due to vacation, holiday and illness.

Certain employment provided by elementary and secondary schools does not normally constitute 12 months of work each year. For the convenience of the employee, the salary earned in the duty months may be prorated into equal monthly installments throughout the entire year provided the employee's regular rate for overtime pay purposes is computed on the salary earned in the duty months and not on the prorated installments. For example, a school may employ a nonexempt employee for 10 months out of the year and, by agreement, pay that employee his salary over a 12-month period. This is permissible providing the employee's regular rate for overtime pay purposes is computed on the 10-month basis.

The regular rate for an employee paid solely on an hourly rate is the employee's hourly rate. One and one-half times this rate must be paid to covered, nonexempt employees after 40 hours of work in a workweek. For an employee who is paid a salary for a specified number of hours a week, the regular rate is obtained by dividing the weekly salary by the specified hours. One-half this rate is due the employee for each hour over 40 up to the specified number of hours, after which time and one-half the regular rate is due. If a salary is paid as straight time pay for whatever number of hours is worked in a workweek, and is large enough to provide pay at or above the minimum wage rate for the longest week worked by the employee, the regular rate is obtained by dividing the salary by the total hours worked each week. One-half this rate is due for all hours worked in excess of 40 in the workweek. If a salary is paid on other than a weekly basis, the weekly pay must ordinarily be determined in order to compute the regular rate and overtime pay. For instance, if the salary is paid for a half month, multiply the salary by 24 and divide the product by 52 to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

When payments such as shift differentials and other extra payments for work performed are made, they must be added to the employee's hourly or weekly earnings and the total divided by the hours worked in the workweek to determine the regular rate.

The Act does not require premium pay for Saturday, Sunday, or holiday work as such, or vacation or severance pay, or a discharge notice; nor does it set any limit on the number of hours of work by persons 16 years of age or over. (For a more complete discussion on overtime compensation see Interpretative Bulletin, Part 778.)

HOURS WORKED

An employee who is subject to the Act in any workweek must be paid in accordance with its provisions for all hours worked in that workweek. In general, hours worked includes all the time an employee is required to be on duty or on the employer's premises or at a prescribed workplace, and all the time during which he is

suffered or permitted to work for the employer, including any work performed at home by clerical employees.

For example, time spent by school custodians in the operation and maintenance of school buildings and the protection of school property both during and after school hours is considered hours worked under the Act. Normally, this includes time spent on custodial services performed in connection with activities held by outside groups in the school's facilities.

The hours worked by employees must be combined to determine the total hours worked when they perform in more than one department but for the same employer. For example, a school bus driver who transports children to and from school would also be working when driving school athletic teams or other school groups on trips. (See Interpretative Bulletin, Part 785, for a fuller discussion of hours worked.)

EXEMPTIONS

Executive, administrative, and professional employees: Employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), as defined in Regulations, Part 541, are exempt from the wage and hours provisions of the Act. Set forth below are some of the salient features of these regulations, as they apply to school personnel.

Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other heads of the system, deans and department heads who customarily and regularly exercise discretion and judgment in such matters as curriculum, quality and methods of instruction, measuring and testing the learning potential and achievement of students, and establishing and maintaining academic standards.

Work performed by employees in the capacity of "academic administrative personnel" does not include jobs relating to building management and maintenance, cafeteria management, or the health of students. Such employees do not qualify as "academic administrative personnel" but may otherwise qualify for exemption as executive, administrative, or professional employees if the duty and salary tests of the particular exemption are met.

To qualify for exemption, an academic administrative employee must not devote more than 20 percent of his hours of work in a workweek to activities which are not directly and closely related to academic administration, and he must be paid on a salary basis in an amount which is at least equal to either (a) the minimum salary requirement

for other administrative employees stipulated in the Division's Regulations, Part 541, or (b) the entrance salary for teachers in the school system by which he is employed. The 20 percent limitation on nonexempt work is waived for academic administrative personnel paid on a salary basis of not less than $200 per week or $150 per week if employed in Puerto Rico, the Virgin Islands or American Samoa.

A teacher is an employee who is engaged in teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is certified to teach in the school system by which he is employed. Those faculty members who are engaged as teachers but also spend a considerable amount of time in such activities as coaching athletic teams or acting as advisers in such areas as drama or journalism are engaged in teaching.

The driving of a school bus in connection with field trips or activities related to the classroom work of his pupils is an essential part of the work of a teacher. However, a teacher must not devote more than 20 percent of his hours worked in a workweek to activities which are not an essential part of his teaching activity. For example, the driving of a school bus at the beginning and end of each school day would not be exempt type work.

Teachers are excepted from the salary or fee requirement which is ordinarily required for exemption as a professional employee. In addition, the 20 percent limitation on nonexempt work is waived for a teacher paid on a salary basis of not less than $200 per week or $150 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa.

COVERED NONEXEMPT EMPLOYEES

All other employees of the school system, such as clerical workers, secretaries, custodial and maintenance employees, cafeteria workers, and teachers' aides, must be paid in accordance with the minimum wage, overtime pay, and equal pay requirements of the Act.

CHILD LABOR PROVISIONS

The Act sets a basic 16-year minimum age for most occupations. An 18-year minimum applies to hazardous occupations, except in agriculture. A 16-year minimum age applies to agricultural employment during school hours and in hazardous agricultural occupations at any time. There is no minimum age for nonhazardous farm work outside school hours. Minors 14 and 15 years old may work outside school hours in a variety of nonmanufacturing and nonhazardous jobs for limited hours and under other specified conditions of work. Child Labor Bulletin No. 101 describes these standards. When both State and Federal laws apply, the higher standards prevail.

Employers are urged to obtain state age or employment certificates generally issued by public school officials to show that a minor is the legal age for the job.

RECORDS

Employers are required to keep records on wages, hours, and other items listed in the recordkeeping regulations (Regulations, Part 516). No particular form of records is required. Time clocks are not required, but all hours worked each workday and the total hours worked each workweek must be recorded in some matter for nonexempt employees.

POSTER

The covered educational institution must display a Notice to Employees where the employees may readily see it. This poster, which briefly outlines the Act's basic requirements, may be obtained free from the nearest office of the W-H Division.

ENFORCEMENT: Authorized representatives of the W-H Division may investigate and gather data regarding wages, hours, and other conditions and practices of employment. The Act provides these methods of recovering unpaid minimum and/or overtime wages: (1) the Administrator may supervise the payment of back wages; (2) in certain circumstances the Secretary of Labor may bring suit for back pay upon the written request of an employee; and (3) the Secretary of Labor may also obtain a court injunction restraining violations of the law, including the unlawful withholding of proper minimum wage and overtime pay.

It is a violation of the law to discharge or otherwise discriminate against an employee for filing a complaint or participating in a proceeding under the law.

Willful violations may be prosecuted criminally and the violator fined up to $10,000 on each count. A second conviction for such a violation may result in imprisonment.

A 2-year statute of limitations applies to the recovery of back wages except in the case of willful violations, in which case a 3-year statute of limitations would be applicable.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT

This Act promotes the employment of the older worker based on ability rather than age; prohibits arbitrary age discrimination in employment; and helps employers and employees find ways to meet problems arising from the impact of age discrimination on employment, based on age, by employers of 25 or more persons in an industry affecting interstate

commerce, employment agencies serving at least one such employer, and labor organizations with 25 or more members in an industry affecting interstate commerce. However, this law does not apply to employment with Federal, State or local governments.

Most individuals who are at least 40 but less than 65 years of age are protected from age discrimination in matters of hiring, discharge, compensation, or other terms, conditions, or privileges of employment.

THE FEDERAL WAGE GARNISHMENT LAW

The Federal Wage Garnishment Law (Title III of the Consumer Credit Protection Act) sets restrictions on the amount of an employee's earnings that may be deducted in any one week through garnishment proceedings and on discharge from employment by reason of garnishment. When an employee's disposable earnings -- the part remaining after deductions required by law are made -- are more than $64 a week, up to 25 percent of the disposable earnings may be garnished. Where the disposable earnings are $64 or less, only the amount over $48 may be garnished. This law does not change most garnishment procedures established by State law, nor does it annul or affect any provision of a State law that provides greater restrictions on garnishments than under Federal law.

LIST OF PUBLICATIONS

Fair Labor Standards Act
General Coverage, WH Publication 1358
Recordkeeping Regulations, 29 CFR 516
Wage Payments under the Fair Labor Standards Act, Regulations, 29 CFR Part 531
Executive, Administrative, Professional and Outside Salesman Exemptions under the Fair Labor Standards Act, WH Publication 1363
Overtime Compensation, WH Publication 1325
Hours Worked, WH Publication 1344
Equal Pay for Equal Work, 29 CFR Part 800
Child Labor Bulletin 101
Age Discrimination in Employment, 29 CFR 850 and Part 860
The Federal Wage Garnishment Law, WH Publication 1324 (Rev.)

Wage-Hour Reference Service

A looseleaf regulations system, Federal Labor Laws, containing all the laws administered by the Wage and Hour Division, together with the regulations and interpretative bulletins pertaining to them, is

available. It supplies materials on the Fair Labor Standards Act, Federal Wage Garnishment Law, Age Discrimination in Employment Act and labor standards for employees of government contractors. Among the latter are the Service Contract Act, Walsh-Healey Public Contracts Act, Davis-Bacon Act and Contract Work Hours and Safety Standards Act.

Federal Labor Laws is a handy reference source for employers, labor unions, accountants, attorneys and labor consultants. The publication covers such topics as minimum wages, overtime pay, child labor, equal pay and recordkeeping. It explains and deals with the types of employment which are subject to each of the laws. The looseleaf system provides for easy updating of the materials, as subscribers will receive amended pages when changes are made. A subscription includes all amendments which may be issued during a two-year period.

Federal Labor Laws will be sent by mail for $20.10 payable in advance. Make check or money order payable to the Superintendent of Documents. Orders should be sent direct to Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402.

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